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Supreme Court, U.S.
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Docket No.

IN THE SUPREME COURT
OF THE UNITED STATES

ZACHARY TAYLOR, PETITIONER

V.

STATE OF GEORGIA, RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI
TO THE GEORGIA SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI

Please Serve:

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QUESTION PRESENTED:

WHETHER THE STATE AFTER NOTICING A DEFENDANT THAT THE ALLEGATIONS HE MADE IN A CIVIL COMPLAINT CAN NOT BE USED AGAINST HIM CAN NEVERTHELESS USE THESE ALLEGATIONS TO PROVE CRIMINAL INTENT TO COMMIT THE CRIME OF MURDER IN DISREGARD OF THE FIFTH AMENDMENT RIGHT AGAINST SELF-INCRIMINATION.

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PETITION FOR A WRIT OF CERTIORARI

The Petitioner respectfully petitions for a writ of certiorari to review the judgment of the Georgia Supreme Court.

OPINIONS BELOW

The opinion of the Georgia Supreme Court is reported as *Zachary Taylor v. State*, S07A0404. A copy of this opinion is attached as Appendix "A," to this petition.

JURISDICTION

The judgment of the Georgia Supreme Court was entered on May 14, 2007. This court has jurisdiction pursuant to United States Supreme Court Rule 12&13, over this matter.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides in pertinent part:

> Nor shall [he] be compelled in any criminal case to be a witness against himself.

STATEMENT

Zachary Taylor was indicted by a Harris County Grand Jury for the murder of Leonard Lamar Railey. (R. 5)

On Februay 13, 2004, Leonard Lamar Railey, was struck by an unidentified vehicle as he was walking toward the cashier at J&A tire shop in Hamilton, Georgia on Hwy 27. The vehicle left the scene. The first person to contact the authorities was Doug Jeffcoat. Jeffcoat testified at trial that he was proceeding north on Hwy 27, when he observed, a man he later came to know as Leonard Lamar Railey, being struck by an automobile, which Jeffcoat could only describe as dark in color. (T. 118, Lines 23-24). Jeffcoat made a left into the gas station. (T. 98-100) He commented at trial that he did not see any

oncoming traffic. (T. 104, Line 7) He stopped beside Railey who was lying on the ground, to render aid and check his status.(T. 101, Line 13) Then he proceeded into J&A tire shop/store where he encountered and advised the store cashier, Hema Dhruv, that Railey had been struck. (T. 113, Line 21) Hema Dhruv testified that she did not hear or witness anything. (T. 133, Line 25) After advising Dhruv, Jeffocoat called 911. (T. 116) His 911 call was logged at 18:55:05. (T. 91) Jeffcoat continued to render aid, and was later joined by a man and a woman in a pickup truck, who stopped momentarily then left to chase the perpetrator. (T. 122)

Keith Hammond, the state's so-called eyewitness, testified that at approximately 6:45 p.m. he was leaving Hamilton traveling south on Hwy 27

going to Columbus and was going around the corner near the J&A tire shop/store and noticed out of the corner of his right eye, a car moving at a high rate of speed through the parking lot close to the door at J&A. (T.455) The vehicle struck an individual knocking him several feet into the air and upside down. (T. 455) He saw the individual land on his head and shoulder. (T. 456)

The vehicle then "fish-tailed" as it exited the parking lot onto Highway 27, traveling south. According to Hammond, the vehicle came close to striking his vehicle as it fled the scene at a high rate of speed. (T. 456) Hammond stated that he flowed in behind the car and reported the incident to 911 operators. (T. 458) He provided the Harris County 911 operators with the tag number of the sedan he was

following as BANG. (T. 461) He lost contact with 911 on his cellular telephone and re-established communications with 911 again and continued following the sedan at speeds of 65 to 70 miles per hour. (T. 463) The vehicle appeared to attempt to eldue Hammond as he turned east on Georgia Highway 208 as the vehicle accelerated the Harris County Sheriff's Deputies came up behind Hammond passed his vehicle and stopped the suspect's vehicle. (T. 464)

Keith Hammond's call was logged in at 18:55:22. (T. 92) Seventeen seconds after Jeffcoat's call.

Investigator Gary Lewis testified that he met with Keith Hammond at 8:40 p.m. at the Medical Center, located in Columbus, Georgia, on the night of

the incident.

Based upon Keith Hammond's version of the events, Lewis attempted to recreate the incident. Lewis drove the scene in a comparable vehicle, 1997 Ford Crown Victoria, from the north entrance of the J&A Tire Center into the sheltered awning of the gasoline station where Railey, the victim, was struck, and opined that it was impossible to enter the area at the speed indicated by Hammond. (T. 277)

The testimony of the coroner, Keith Lehman, M.D., put the time of death some two weeks after the date of the incident - (February 13, 2004) or February 29, 2004. Lehman nevertheless opined that Railey's death was caused by the injury Leonard Lamar Railey suffered to his leg when he was struck. Lehman admitted, however, on cross-examination that he

based his finding in part on the fact that Railey's leg was broken. Upon being shown the x-ray report, which demonstrated Railey's leg was not broken, Lehman confessed that he was unaware of this fact, (T. 442), and that he was not provided with the x-ray report before he issued his official report. (T. 441)

In order to prove motive, the State presented the testimony of the Chief Magistrate of Harris County, Judge Charolette Brashears, an individual the Petitioner had sued. (T. 871)

The state was allowed, in order to show motive, to introduce various pleadings including a certified federal lawsuit an arrest warrant application and search warrant as Exhibits 43A, 43B, 43C, (T. 391) and 44, (T. 382).

The Petitioner objected to the use of his civil

pleadings and arrest warrant application in a written pre-trial motion or motion in limine. (R. 1560, 1623) as well as at trial. (T. 301), (T. 383), and (T. 392)

At the close of the state's case, the Petitioner, decided against the advise of his counsel to take the stand on his own behalf. During the course of his testimony, he began to argue with the prosecutor, Mark Post. (T. 537) Mr. Post also argued back stating at one point that he, [the Petitioner], was not going to talk about Ms. Railey, the victim's wife. (T. 533)

This exchange created such an atmosphere, that no jury could have be expected to calmly and without prejudice deliberate. Accordingly, the jury convicted the defendant on all counts save felony murder.

REASON FOR GRANTING THE WRIT:

The contents of a civil action before a federal court pursuant to 42 USC 1983 are privileged, therefore Petitioner can not be said to have knowingly made a statement that could be used against him to prove a crime charge or waive his Fifth-Amendment right against self-incrimination, where he believed that the allegations he made in a civil complaint were immune from criminal prosecution pursuant to O.C.G.A. § 51-5-8

O.C.G.A. § 51-5-8 states in pertinent part as follows "all charges, allegations, and averments contained in regular pleadings filed in a court of competent jurisdiction, which are pertinent and

material to the relief sought," are absolutely privileged. This code section provides absolute immunity. The appellate decisions in this state have not limited this absolute privilege to formal court pleadings, but rather have extended it to allegations in official documents in judicial and quasi-judicial proceedings. Such as allegations made in affidavits, protective orders prepared by counsel, and filings with the state employment agency. See *Williams v. Stepler*, 227 Ga. App. at 595 (protective order prepared for judge by attorney in child custody action); *Land v. Delta Airlines*, 147 Ga. App. 738 (1978) (employer's statements to and from Employment Security Agency of Georgia Department of Labor)

In *Williams v. Stepler*, 227 Ga App 591(1997),

the plaintiff asserted that the trial court erred in granting Stepler summary judgment on his defamation and false light claims, which were based on Stepler's preparation of a protective order in a family violence action.

There, the record showed that, following the hearing, the trial court directed Stepler to draft the protective order. After preparing a draft order, Stepler sent a copy to Williams' attorney for comments and suggestions. When she received no response from Williams' attorney, Stepler sent the proposed order to the trial judge and a copy to Williams' attorney. The trial judge subsequently adopted the proposed order verbatim.

Williams contended that the order defamed him because it contained a finding that he improperly

touched his son and a citation to a simple battery case, *Wells v. State*, in which the defendant was convicted of pinching a woman's breast.

Williams argued that because the trial judge did not specifically include these references in his oral order from the bench, Stepler's inclusion of them in her proposed written order gave rise to his tort claims against her.

The Court disagreed with Williams' argument and found the submitted order was absolutely privileged , citing, O.C.G.A. § 51-5-8, which provides in pertinent that "all charges, allegations, and averments contained in regular pleadings filed in a court of competent jurisdiction, which are pertinent and material to the relief sought, whether legally sufficient to obtain it or not, are privileged. However

false and malicious such charges, allegations, and averments may be, they shall not be deemed libelous."*ID*. "The privilege is intended 'for the promotion of the public welfare, the purpose being that members of the legislature, judges of courts, jurors, lawyers, and witnesses may speak their minds freely and exercise their respective functions without incurring the risk of a criminal prosecution or an action for the recovery of damages.' [Cit.]" *Stewart v. Walton*, 254 Ga. 81, 82 (2) (1985).

It is clear, as the Court found, from a review of past decisions that, in light of the foregoing policy considerations, it had not strictly limited the privilege under O.C.G.A. § 51-5-8 to "pleadings" as they are defined under O.C.G.A. § 9-11-7 (a) . Rather, the absolute privilege afforded by O.C.G.A. § 51-5-8 had

been more broadly construed to cover a notice of lis pendens, an affidavit in support of an arrest warrant, and the words of a judge in the course of a judicial proceeding. *Alcovy Properties v. MTW Investment Co.*, 212 Ga. App. 102, 103 (1) (1994); *Watkins v. Laser/Print-Atlanta*, 183 Ga. App. 172, 173 (2) (1987); *Bell v. Anderson*, 194 Ga. App. 27 (1989). Indeed, as the Court noted, we have generally described the coverage of the privilege to include "official court documents" and acts of "legal process." *Phillips v. MacDougald*, 219 Ga. App. 152, 155 (2) (1995); *Rothstein v. L. F. Still & Co.*, 181 Ga. App. 113 (1986).

Accordingly, the Court concluded that the trial court did not err in granting Stepler summary judgment on Williams' claims for defamation and

invasion of privacy.

Similar to the Court's determination that the allegations set forth in the attorney's draft of a protective order were privileged in *Stewart v. Walton*, 254 Ga 812 (1985), the Court found allegations referring to the plaintiff as a person who illegally transferred, moved, sold, hid and other similar acts to cheat, swindle and defraud the plaintif, privileged as well.

The Court applied the same reasoning utilized in *Stepler,* by first citing O.C.G.A. § 51-5-8 as the statute providing the defendant with absolute immunity. "All charges, allegations, and averments contained in regular pleadings filed in a court of competent jurisdiction, which are pertinent and material to the relief sought, whether legally sufficient

to obtain it or not, are privileged." *ID.*

The Court, here again, in an effort to leave no doubt as to what type of language is covered, characterized the type of allegations protected to include false and malicious charges.

"The wisdom of so broad a privilege lies in the recognition that, without it, every complaint filed could generate a counterclaim for defamation. The privilege is intended "for the promotion of the public welfare, the purpose being that members of the legislature, judges of courts, jurors, lawyers, and witnesses may speak their minds freely and exercise their respective functions without incurring the risk of a criminal prosecution or an action for the recovery of damages." *Fedderwitz v. Lamb*, 195 Ga. 691, 696 (1943).

Applying the *Stepler* Court's reasoning to the case at hand, it is clear that the statements, charges and allegations made by this Petitioner in a civil proceeding should not have been used against him in this criminal proceeding. The same immunity that the *Stepler and Stewart* court found necessary for the promotion of the public welfare should apply here. Specifically, the Court noted in those cases that the Plaintiff should be free from the risk of criminal prosecution.

Hence, it can not said that one is placed upon notice that the immunity as setforth in O.C.G.A. 51-5-8 is inapplicable in a criminal proceeding.

Accordingly defendant did not knowingly and voluntarily waive his fifth amendment right to self-incrimination.

CONCLUSION

For all of the reasons stated above Petitioner moves this Court to grant this petition and reverse the decision of the Georgia Supreme Court.

Respectfully submitted

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APPENDIX "A"

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GA Supreme Court Opinion denying appeal
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IN THE SUPREME COURT OF GEORGIA

S07A0404, TAYLOR V. STATE

Decided: May 14, 2007

THOMPSON, Justice

Defendant Zachary Bouvier Taylor was convicted of malice murder and aggravated battery in connection with the death of Lamar Railey.[1] He

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[1] Defendant was indicted on May 9, 2005, and charged with malice, felony murder predicated on the underlying felony of aggravated assault, aggravated assault, and aggravated battery. Trial commenced on November 29, 2005, and the jury returned its verdict on December 1, 2005, finding defendant guilty on all counts except felony murder (which was placed on the dead docket). The trial court merged the aggravated assault conviction with the malice murder conviction, and sentenced defendant to life for malice murder and a consecutive term of 20 years for aggravated battery. Defendant filed a timely notice of appeal. The case was docketed in this Court on November 22, 2006, and orally argued on March 12, 2007.

appeals, asserting, inter alia, the trial court erred in permitting the State to introduce in evidence the pleadings filed in a civil lawsuit brought by Taylor against Railey and others. Finding no error, we affirm.

Railey owned and operated a wrecker service in Hamilton, Georgia. After closing his business on the evening of February 13, 2004, Railey drove a wrecker to the J&A Tire Company where he stopped to purchase diesel fuel. When Railey finished fueling the wrecker, he headed for the business office to complete his purchase. Suddenly, Railey was struck by an accelerating motor vehicle. He was thrown into the air and landed on the pavement; he tried to get up, but was unable to do

so. A passing motorist, who saw the vehicle strike Railey, called 911 and gave chase. As he followed the vehicle, described as a green sedan, the motorist was able to remain in contact with police and apprise them of the sedan's route. Soon, a police officer passed the motorist, fell in behind the sedan, and pulled it over. Other officers arrived on the scene. Defendant exited the vehicle and was placed under arrest.

Police noticed the marks on the front of defendant's vehicle were consistent with what one would expect after recently hitting a pedestrian. Officers conducted a search of the vehicle and found numerous items, including a manila envelope upon which the victim's name was written. Inside

the envelope, police discovered various legal documents stemming from a year-long dispute between defendant and the victim.

In the meantime, the victim was taken to the hospital where he was admitted with multiple fractures and deep bruises to his right leg. After a short hospital stay, the victim was discharged and he was sent home to recuperate. On February 29, 2004, sixteen days after he was injured, the victim suddenly collapsed. Emergency personnel were summoned to the victim's home, but they were unable to revive him, and he died shortly thereafter. The medical examiner determined that pulmonary thromboemboli, which were the result of the injuries to the victim's right leg caused the victim's death.

1. The evidence was sufficient to enable any rational trier of fact to find defendant guilty beyond a reasonable doubt of malice murder and aggravated battery. We reject defendant's assertion that, with regard to the murder conviction, the State failed to proved that defendant formed the intent to kill the victim, an essential element of malice murder.

> [T]he crime of malice murder is committed when the evidence shows either an express or, in the alternative, an implied intent to commit an unlawful homicide. This meaning of malice murder is consistent with the general rule that crimes which are defined so as to require that the defendant intentionally cause a forbidden result are usually interpreted to cover one who knows that his conduct is substantially certain to cause the result, whether or not he desires the result to occur. Thus, a malice murder can be shown not only by evidence that the defendant acted with the deliberate intention

> unlawfully to take the life of another human being which is manifested by external circumstances capable of proof, but also by evidence that the defendant acted where no considerable provocation appears and where all the circumstances of the killing show an abandoned and malignant heart. In other words, evidence that the defendant acted with implied malice is, for purposes of demonstrating his guilt of the crime of malice murder, no less probative than proof that he acted with a specific intent to kill.

Sheffield v. State, 281 Ga. 33, 35(2)(635 SE2d 776)(2006), quoting Parker v. State, 270 Ga. 256,259(4)(507 SE2d 744)(1998).

We also find that, contrary to defendant's contention, the State introduced sufficient evidence to prove that the injuries to the victim's leg were

efficient, proximate cause of death. That is because the evidence shows that the injuries directly and materially contributed to the subsequently occurring pulmonary thromboemboli which immediately killed the victim. See Singley v. State, 198 Ga. 212(1)(31 SE2d 349)(1944)(injury is efficient, proximate cause of death whenever it is itself the sole proximate cause of death or it directly and materially contributes to a subsequently accruing immediate cause of death).

2. In order to prove that defendant intended to kill the victim, the State introduced pleadings which defendant filed in a civil action he brought against the victim, as well as an affidavit supporting an arrest warrant through which defendant sought to

have the victim arrested. Defendant asserts the trial court erred in admitting the documents because the allegations contained therein are privileged.

It is true that, as defendant points out, allegations set forth in official court documents are privileged. See O.C.G.A. § 51-5-8; Fedderwitz v. Lamb, 195 Ga. 691(25 SE 2d 414)(1943); Williams v. Stepler, 227 Ga. App. 591(490 SE 2d 167)(1997); Watkins v. Laser/Print-Atlanta, 183 Ga. App. 172,173 (358 SE2d 477)(1987). However, this privilege was designed to foster the judicial process and protect the public welfare by shielding litigants from liability or prosecution. Fedderwitz, supra at 696. The privilege has no application where, as here, the allegations set forth in the documents are

introduced to demonstrate the motive or state of mind of a criminal defendant.

3. During the course of the trial, defendant attempted to make various pronouncements, and to address the victim's wife, prompting the prosecutor to object, and the court to admonish defendant. Citing Weldon v. State, 247 Ga. App. 17(1)(543 SE2d 56)(2000), defendant asserts the trial court erred in failing to grant a mistrial because the prosecutor's objections and the court's admonishments took place in the presence of the jury. We disagree. The prosecutor's objections and the trial court's admonishments took issue with defendant statements and conduct in a fair, objective and unbiased manner. Unlike Weldon, in which

defendant was chained, gagged and admonished in the jury's presence, the trial court in this case did not employ any measure which could be said to have compromised the jury's ability to remain impartial.

Judgment affirmed. All the Justices concur.